

Senate Bill No. 614

Passed the Senate September 12, 2007

Secretary of the Senate

Passed the Assembly September 10, 2007

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 17250.20, 17250.30, 17250.35, 81700, 81702, and 81704 of, and to repeal Sections 81700.5 and 81700.7 of, the Education Code, to amend Section 4 of Chapter 421 of the Statutes of 2001, and to amend Section 4 of Chapter 637 of the Statutes of 2002, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 614, Simitian. Public works: design-build contracts.

(1) Existing law authorizes, until January 1, 2010, a school district governing board to enter into a design-build contract, as defined, in which factors in addition to price and cost may be considered in awarding a contract for the design and construction of a school facility that exceeds \$10,000,000.

This bill instead would authorize a school district governing board to enter into those contracts that exceed \$2,500,000, and would extend this authority until January 1, 2014.

(2) Existing law prohibits, in a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld to exceed the percentage specified in the contract between the school district or community college district and the design-build entity, except as provided.

This bill would prohibit retention proceeds withheld by the school district or community college district from the design-build entity to exceed 5% if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(3) Existing law requires each contract with a design-build entity to provide that no construction or alteration of any school building is to commence prior to the receipt of the written approval of the plans, as to the safety of design and construction, from the Department of General Services.

This bill would define “plans” for these purposes to include, but is not limited to, plans for foundations or other building systems, as determined by the Division of the State Architect, based on design criteria provided by the architect or structural engineer of

the design-build entity to the Department of General Services prior to the receipt of completed building plans.

(4) Existing law authorizes the governing boards of 3 specified community college districts and up to 5 community college facility construction projects selected by the Chancellor of the California Community Colleges to enter into a design-build contract, as defined, until January 1, 2011, in which factors in addition to price and cost may be considered in awarding a contract for the design and construction of a community college facility for an amount that exceeds \$10,000,000.

This bill instead would make those provisions applicable to any community college district governing board and would authorize the governing board of a community college district to enter into those contracts that exceed \$2,500,000, and would extend this authority until January 1, 2014.

(5) This bill would provide that, except as provided in the bill, nothing in the bill is to be construed to affect the application of any other law.

The people of the State of California do enact as follows:

SECTION 1. Section 17250.20 of the Education Code is amended to read:

17250.20. Upon making a determination by a school district governing board that it is in the best interest of the school district, the governing board may enter into a design-build contract for both the design and construction of a school facility if that expenditure exceeds two million five hundred thousand dollars (\$2,500,000) if, after evaluation of the traditional design, bid, and build process of school construction and of the design-build process in a public meeting, the governing board makes written findings that use of the design-build process on the specific project under consideration will accomplish one of the following objectives: reduce comparable project costs, expedite the project's completion, or provide features not achievable through the traditional design-bid-build method. The governing board also shall review the guidelines developed pursuant to Section 17250.40 and shall adopt a resolution approving the use of a design-build contract pursuant to this chapter prior to entering into a design-build contract.

SEC. 2. Section 17250.30 of the Education Code is amended to read:

17250.30. (a) Any design-build entity that is selected to design and build a project pursuant to this chapter shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omissions insurance coverage sufficient to cover all design and architectural services provided in the contract. This chapter does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(b) Any payment or performance bond written for the purposes of this chapter shall use a bond form developed by the Department of General Services pursuant to subdivision (g) of Section 14661 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used on school district design-build projects throughout the state.

(c) (1) All subcontracts that were not listed by the design-build entity in accordance with Section 17250.25 shall be awarded by the design-build entity.

(2) The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted.

(B) Provide a fixed date and time on which the subcontracted work will be awarded.

(3) Subcontractors bidding on contracts pursuant to this subdivision shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(4) (A) If the school district elects to award a project pursuant to this section, retention proceeds withheld by the school district from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(B) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the school district and the design-build entity. If the design-build entity provides written notice to any subcontractor

who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the school district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

(d) The school district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the school district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.

SEC. 3. Section 17250.35 of the Education Code is amended to read:

17250.35. (a) The minimum performance criteria and design standards established pursuant to this chapter by a school district for quality, durability, longevity, and life-cycle costs, and other criteria deemed appropriate by the school district shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the school district. The governing board may, and is strongly encouraged to, retain the services of an architect or structural engineer throughout the course of the project in order to ensure compliance with this chapter. Any architect or structural engineer retained pursuant to this subdivision shall be duly licensed and registered in California.

(b) The school district governing board shall be the employer of the project inspector. The project inspector shall be fully independent from any member of the design-build entity and shall not have an affiliation with any member of the design-build entity or any of the project subcontractors. The project inspector shall

act under the direction of either the Director of General Services or a competent, qualified agent of the school district.

(c) The total price of the project shall be determined either upon receipt of the lump-sum bids as set forth in paragraph (1) of subdivision (c) of Section 17250.25, or by completion of the process pursuant to paragraph (2) of subdivision (c) of Section 17250.25.

(d) (1) Each contract with a design-build entity shall provide that no construction or alteration of any school building pursuant to this section shall commence prior to the receipt of the written approval of the plans, as to the safety of design and construction, from the Department of General Services.

(2) For purposes of this subdivision, “plans” includes, but is not limited to, plans for foundations or other building systems based on design criteria provided by the architect or structural engineer of the design-build entity to the Department of General Services prior to the receipt of completed building plans. For purposes of this paragraph, “other building systems” are building systems determined by the Division of the State Architect.

(3) Compliance with paragraph (1) shall be deemed to be in compliance with Sections 17267 and 17297.

(e) The design-build entity shall be liable for building the facility to specifications set forth in the design-build contract in the absence of contractual language to the contrary.

SEC. 4. Section 81700 of the Education Code is amended to read:

81700. (a) It is the intent of the Legislature to enable community college districts to utilize safe and cost-effective options for building and modernizing community college facilities. The Legislature has recognized the merits of the design-build procurement process in the past by authorizing its use for projects undertaken by the University of California, specified local government projects, including school districts, and state office buildings.

(b) The Legislature also finds and declares that community college districts utilizing a design-build contract require a clear understanding of the roles and responsibilities of each participant in the design-build process. The benefits of a design-build contract project delivery system include an accelerated completion of the projects, cost containment, reduction of construction complexity,

and reduced exposure to risk for the community college district. The Legislature also finds that the cost-effective benefits to the community college districts are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity.

(c) It is the intent of the Legislature to provide an optional, alternative procedure for bidding and building community college construction projects.

(d) In addition, it is the intent of the Legislature that the full scope of design, construction, and equipment awarded to a design-build entity under this chapter shall be authorized in a single funding phase. The funding phase may be authorized concurrently with, or separately from, the phase that authorizes the creation of the performance criteria and concept drawings.

(e) It is the intent of the Legislature that design-build procurement as authorized by this chapter shall not be construed to extend, limit, or change in any manner the legal responsibility of public agencies and contractors to comply with existing laws.

SEC. 5. Section 81700.5 of the Education Code is repealed.

SEC. 6. Section 81700.7 of the Education Code is repealed.

SEC. 7. Section 81702 of the Education Code is amended to read:

81702. (a) Upon a determination by a community college district governing board that it is in the best interest of the community college district, the governing board may enter into a design-build contract for both the design and construction of a community college facility if that expenditure exceeds two million five hundred thousand dollars (\$2,500,000) if, after evaluation of the traditional design, bid, and build process of community college facility construction and of the design-build process in a public meeting, the governing board makes written findings that use of the design-build process on the specific project under consideration will accomplish one of the following objectives: reduce comparable project costs, expedite the project's completion, or provide features not achievable through the traditional design-bid-build method. The governing board shall also review the guidelines developed pursuant to Section 81706 and shall adopt a resolution approving the use of a design-build contract pursuant to this chapter prior to entering into a design-build contract.

(b) No state funds appropriated for a design-build capital outlay project may be expended until the Department of Finance and the State Public Works Board have approved performance criteria, or performance criteria and concept drawings, for the project to be financed from the appropriation for capital outlay.

SEC. 8. Section 81704 of the Education Code is amended to read:

81704. (a) Any design-build entity that is selected to design and build a project pursuant to this chapter shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This chapter does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(b) Any payment or performance bond written for the purposes of this chapter shall use a bond form developed by the Department of General Services pursuant to subdivision (i) of Section 14661 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used on community college district design-build projects throughout the state.

(c) (1) All subcontracts that were not listed by the design-build entity in accordance with Section 81703 shall be awarded by the design-build entity in accordance with the design-build process set forth by the community college district in the design-build package.

(2) The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted.

(B) Provide a fixed date and time on which the subcontracted work will be awarded.

(3) Subcontractors bidding on contracts pursuant to this subdivision shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(4) (A) If the community college district elects to award a project pursuant to this section, retention proceeds withheld by the community college district from the design-build entity shall not

exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(B) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the community college district and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the community college district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

(d) The community college district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the community college district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.

SEC. 9. Section 4 of Chapter 421 of the Statutes of 2001, as amended by Section 18 of Chapter 35 of the Statutes of 2006, is amended to read:

Sec. 4. This act shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 10. Section 4 of Chapter 637 of the Statutes of 2002, as amended by Section 19 of Chapter 35 of the Statutes of 2006, is amended to read:

Sec. 4. This act shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 11. Except as provided in this act, nothing in this act shall be construed to affect the application of any other law.

Approved _____, 2007

Governor